

Membership Balance Plan  
Defense Advisory Committee on Investigation, Prosecution, and Defense of  
Sexual Assault in the Armed Forces

Agency: Department of Defense (DoD)

1. Authority: The Secretary of Defense, pursuant to section 546 of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015 (“FY 2015 NDAA”) (Public Law 113-291), as modified by section 537 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114-92), and in accordance with the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended) and 41 C.F.R. § 102-3.50(a), established the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (“the Committee”).
2. Mission/Function: The Committee, pursuant to section 546(c)(1) of the FY 2015 NDAA, will advise the Secretary of Defense and the Deputy Secretary of Defense on the investigation, prosecution, and defense of allegations of rape, forcible sodomy, sexual assault, and other sexual misconduct involving members of the Armed Forces.

Pursuant to section 546(c)(2) and (d) of the FY 2015 NDAA, the Committee, not later than March 30 of each year, will submit to the Secretary of Defense through the General Counsel (GC) for the Department of Defense (DoD), and the Committees on Armed Services of the Senate and House of Representatives, a report describing the results of the activities of the Committee pursuant to section 546 of the FY 2015 NDAA during the preceding year. The Committee will review, on an ongoing basis, cases involving allegations of rape, forcible sodomy, sexual assault, and other sexual misconduct involving members of the Armed Forces.

3. Points of View: Pursuant to section 546(b) of the FY 2015 NDAA, the Committee will be composed of no more than 20 members. Committee members selected will have experience with the investigation, prosecution, and defense of allegations of sexual assault offenses. Members of the Committee may include Federal and State prosecutors, judges, law professors, and private attorneys. Members of the Armed Forces serving on active duty may not serve as members of the Committee.

Members of the Committee who are not full-time or permanent part-time Federal officers or employees will be appointed as experts or consultants pursuant to 5 U.S.C. § 3109 to serve as special government employee (SGE) members. Committee members who are full-time or permanent part-time Federal officers or employees will be appointed pursuant to 41 C.F.R. § 101-3.130(a) to serve as regular government employee (RGE) members.

The DoD, unless otherwise instructed by an Act of Congress or Presidential directive, does not use representative members on DoD established or supported advisory committees.

All members of the Committee are appointed to provide advice on the basis of their best judgment on behalf of the Government without representing any particular point of view and in a manner that is free from conflict of interest.

4. Other Balance Factors: N/A

Membership Balance Plan  
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Sexual Assault in the Armed Forces

5. Candidate Identification Process: The DoD, in selecting potential candidates for the Committee, reviews the educational and professional credentials of individuals with extensive professional experience in the points of view described above. Potential candidates may be gathered and identified by the GC DoD and the Committee's staff.

Once potential candidates are identified, the Designated Federal Officer (DFO) will review the educational and professional credentials of each individual relative to the mission of the Committee and narrow the list of potential candidates. The DFO will forward a balanced list of potential candidates to the GC DoD. The GC DoD will verify the balance between the educational and professional credentials of the individual candidates and the mission of the Committee.

Prior to the formal nomination, the list of candidates undergoes a review by the Office of General Counsel for the DoD and the Office of the Advisory Committee Management Officer (ACMO) to ensure compliance with Federal and DoD governance requirements, including compliance with the Committee's charter and membership balance plan. Following this review, the GC DoD discusses his or her potential nominees with the Secretary of Defense or the Deputy Secretary of Defense and receives authorization to proceed with the nominations. Pursuant to DoD policy, only the Secretary or the Deputy Secretary of Defense can invite or approve the appointment of individuals to serve on DoD established or supported advisory committees and subcommittees.

Following the Secretary of Defense or the Deputy Secretary of Defense authorization, the candidates are required to complete the necessary appointment paperwork, to include meeting ethics requirements stipulated by the Office of Government Ethics for advisory committee members.

The GC DoD is authorized to administratively certify the appointment of the Committee members that were previously authorized by the Secretary of Defense or the Deputy Secretary of Defense. Consistent with Deputy Secretary of Defense policy and the authority delegated to the ACMO by the Assistant Deputy Chief Management Officer, the ACMO is authorized to administratively certify the annual renewal of appointment of Committee members.

6. Subcommittee Balance: The DoD, when necessary and consistent with the Committee's mission and DoD policies and procedures, may establish subcommittees, task groups, or working groups to support the Committee.

Subcommittee members may be members of the Committee or new nominees, as recommended by the GC DoD and based upon the points of view represented and the functions to be performed. The Secretary of Defense or the Deputy Secretary of Defense shall authorize the appointment of subcommittee members, subject to annual renewals, if they have not been previously appointed to serve on the Committee or another DoD advisory committee. The GC DoD is authorized to administratively certify the appointment of subcommittee members that were previously authorized by the Secretary of Defense or the Deputy Secretary of Defense.

Membership Balance Plan  
Defense Advisory Committee on Investigation, Prosecution, and Defense of  
Sexual Assault in the Armed Forces

Subcommittee members who are not full-time or permanent part-time Federal officers or employees shall be appointed as experts or consultants pursuant to 5 U.S.C. §3109 to serve as SGE members. Those members who are full-time or permanent part-time Federal officers or employees shall be appointed pursuant to 41 C.F.R. § 101-3.130(a) to serve as RGE members.

7. Other: As nominees are considered for appointment to the Committee, the DoD adheres to the Office of Management and Budget's Revised Guidance on Appointment of Lobbyists to Federal Advisory Committees, Boards, and Commissions (79 FR 47482; August 13, 2014) and the rules and regulations issued by the Office of Government Ethics.
8. Date Prepared: February 18, 2016